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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re SAM. S., a Person Coming Under the
Juvenile Court Law.

B212746

(Los Angeles County
Super. Ct. No. CK69126)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

SANDIE T.,

Appellant.

APPEAL from a judgment and an order of the Superior Court of Los Angeles
County, Debra Losnick, Referee. Affirmed.

Liana Serobian, under appointment by the Court of Appeal, for Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County
Counsel and Navid Nakhjavani, Associate County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Appellant Sandie T. (mother) appeals a judgment terminating her parental rights to Sam. S. under Welfare and Institutions Code section 366.26.¹ Mother also appeals an order denying her section 388 petition for modification of an order terminating her family reunification services. We affirm the judgment and order.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Detention of Sam.*

On June 12, 2007, the Los Angeles Department of Children and Family Services (Department) received a report alleging that mother was a chronic drug user and that she neglected Sam., who was about six months old at that time. The Department investigated the matter by interviewing mother, Hazel S., Sam.'s maternal great-grandmother (great-grandmother), and Sandra S., Sam.'s maternal grandmother (grandmother). Grandmother and great-grandmother advised the Department that mother often left Sam. with them while mother "runs the street." They also stated that mother used illegal drugs, though they never personally saw her do so. Mother denied that she neglected Sam. and denied being a chronic drug user, but she admitted using marijuana.

In July 2007, mother left Sam. in the care of Sam.'s grandmother and great-grandmother for three days. During that time Sam. had a fever. Grandmother took Sam. to a hospital, where she was given the drug Motrin. Sam. recovered and apparently did not suffer any permanent harm from the fever.

Grandmother contacted the Department and alleged that mother had abandoned Sam. with a fever, without telling grandmother where she was and without giving grandmother any contact information. Great-grandmother essentially advised the Department of the same information.

¹ All statutory references are to the Welfare and Institutions Code.

Mother denied abandoning Sam. She told the Department that she went on a three-day vacation. Mother also stated that she was not informed about Sam.'s fever until she returned from vacation. Mother further claimed that she advised grandmother where she was and that she left a telephone number that grandmother could call.

The Department case social worker assigned to investigate the matter noted that there were many "unresolved issues" between grandmother and mother. Grandmother disapproved of mother's "lifestyle," including her alleged bisexuality and use of illegal drugs. Mother contended that grandmother fabricated allegations against her because she wanted to take Sam. away from mother. The Department believed grandmother's allegations.

2. The Department's Juvenile Dependency Petition

On July 16, 2007, the Department filed a juvenile dependency petition alleging that Sam. came within the jurisdiction of the juvenile court under section 300, subdivision (b). The petition was based on mother's alleged abandonment of Sam. on or about July 11, 2007, and on mother's alleged history of illicit drug abuse. On the same day the petition was filed, the court found that there was a prima facie case for detaining Sam. Sam. was temporarily placed in the care of grandmother.

On October 23, 2007, the juvenile court sustained the petition and Sam. was declared a dependent of the court. Pursuant to section 361, subdivision (b), the court also ordered that grandmother retain physical custody of Sam. Mother was granted family reunification services. Mother was ordered to participate in individual, parenting, and drug counseling, and to submit to random drug tests. Mother was also granted the right to Department-monitored visits with Sam. Sam.'s alleged father was not granted family reunification services.

3. Termination of Family Reunification Services to Mother

Mother did not take advantage of the family reunification services ordered by the court. The Department case worker reported that mother did not cooperate with her and that mother failed to promptly respond to the case worker's attempts to communicate with her. Although mother eventually began counseling programs, she did not complete

any of the court-ordered counseling prior to the six-month review hearing on June 4, 2008. Further, mother repeatedly failed to appear for drug tests and repeatedly tested positive for cannabinoids. Mother also failed to visit Sam. on a consistent and regular basis.

In the meantime, grandmother took good care of Sam. Sam. and grandmother were bonding and Sam. was developing normally. Grandmother expressed an interest in adopting Sam.

On June 4, 2008, the juvenile court terminated mother's family reunification services. At the hearing, the court noted that mother was only in partial compliance with the Department's case plan. The court further stated that although mother had not shown "any pattern of responsibility whatsoever[.]" the court would consider reopening family reunification services pursuant to a section 388 petition if mother changed her behavior. The court also scheduled a section 366.26 hearing on October 1, 2008.

4. *Mother's Conduct Between the Six-Month Hearing and the Hearing on Her Section 388 Petition*

After the June 4, 2008, hearing mother made greater efforts to win the juvenile court's confidence. Mother completed all of the individual, parenting and drug counseling ordered by the court. She also passed four consecutive random drug tests.

According to the Department, however, mother missed many scheduled visits with Sam. and often came late to the visits and terminated the visits early. Mother claims that the reason she missed some visits is because the Department mailed a visitation schedule to her former address. Mother further claims that she attempted to ascertain the visitation schedule from grandmother and the Department over the telephone, but she did not receive their full cooperation. Mother also provided various reasons for appearing late at visits and for leaving visits early. For example, mother contends that she ended the August 4, 2008, visit with Sam. in a park early because it was too hot that day.

The Department and mother dispute the quality of mother's visits. A Department social worker who observed many of mother's visits contends that while the visits went well, mother's interaction with Sam. was merely "friendly" and did not resemble a

typical “mother/daughter” interaction. The Department social worker did not observe a “great bond” between mother and Sam. Mother contends that she had “great bonding” with Sam. and that her relationship with her child was growing stronger. It is undisputed that although Sam. knew mother and was happy to see her, she referred to grandmother as “momma.”

Mother also spent time with Sam. apart from the Department-monitored visits. Mother lived very close to grandmother’s home and great-grandmother’s home. Sam. was regularly left in the care of great-grandmother and Michelle S., Sam.’s maternal great-aunt (great-aunt) who lives with great-grandmother. Mother visited Sam. about twice a week between 10-30 minutes while great-aunt took Sam. for a walk. She also occasionally saw Sam. at great-grandmother’s home.

In the meantime, grandmother continued to take good care of Sam. On September 29, 2008, the Department’s adoption home study of grandmother’s potential adoption of Sam. was approved.

5. Mother’s Section 388 Petition

On September 18, 2008, mother filed a section 388 petition requesting that the June 4, 2008, order be modified in two ways. First, mother requested renewed family reunification services. Second, mother requested that the section 366.26 hearing be taken off calendar.

The section 366.26 and section 388 hearings were continued several times. Finally, on October 29 and 30, 2008, the court held a hearing on mother’s section 388 petition. The court accepted into evidence several Department reports and photographs of mother and Sam. submitted by mother. The court also heard the testimony of a Department social worker, mother, great-aunt, and grandmother. Counsel for the Department and counsel for Sam. opposed the petition.

The court denied the petition. In so doing, the court recognized that mother successfully completed counseling and passed drug tests but concluded that there was no change of circumstances “because of the visitation issue.” The court stated: “I don’t think that the mother made any real effort to see her child through the Department as she

should have.” The court further stated: “The mother has not had consistent and ongoing visits as the Code provides for. And even if I thought she did, it is clearly not in this child’s best interest to grant this relief on the 388 petition.”

6. *Termination of Mother’s Parental Rights*

On December 3, 2008, the juvenile court held a section 366.26 hearing. The court took judicial notice of part of the testimony heard at the section 388 hearing, received new documents into evidence, and heard new testimony by mother and a Department social worker. Sam.’s counsel argued in favor of the Department’s request to terminate mother’s parental rights. At the end of the hearing, the court found that it was likely that Sam. would be adopted. The court further found that mother did not have consistent, meaningful visits with Sam., and that the mother did not have a “real bond” with the child. The court thus terminated mother’s parental rights. This appeal followed.

CONTENTIONS

Mother contends that the juvenile court erroneously denied her section 388 petition because she established changed circumstances and showed that granting the petition was in Sam.’s best interests. Mother also claims that the juvenile court erroneously terminated her parental rights because the court failed to apply the parent-child benefit exception of section 366.26, subdivision (c)(1)(B)(i).

DISCUSSION

1. *The Juvenile Court Did Not Abuse Its Discretion in Denying Mother’s Section 388 Petition*

“After the termination of reunification services, the parents’ interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point ‘the focus shifts to the needs of the child for permanency and stability’ [Citation], and in fact, there is a rebuttable presumption that continued foster care is in the best interests of the child.” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317; see also *In re Marilyn H.* (1993) 5 Cal.4th 295, 308-310.)

Mother sought to modify the order terminating family reunification services pursuant to a section 388 petition. Under section 388, a parent may petition the court to

change, modify or set aside a previous order on the grounds of changed circumstances. (§ 388, subd. (a).) In order to prevail, the parent must meet his or her burden of showing (1) a change of circumstances and (2) that the proposed modification is in the child's best interest. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 526; *In re B.D.* (2008) 159 Cal.App.4th 1218, 1228.)

We review the denial of a petition for modification under section 388 for an abuse of discretion. (*In re B.D.*, *supra*, 159 Cal.App.4th at p. 1228.) "Broad deference must be shown to the trial judge. The reviewing court should interfere only 'if we find that under all the evidence, viewed most favorably in support of the trial court's action, no judge could reasonably have made the order that he did.'" [Citations.]' [Citation.]" (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067.)

Here, there was clearly a change in some of the circumstances that led to the termination of family reunification services for mother. Mother completed the required counseling and was able to pass drug tests. However, viewing the evidence in a light most favorable to the juvenile court's order, mother did not establish that she visited Sam. on a consistent and regular basis.

Moreover, the court acted well within its discretion in determining that it was not in best interest of Sam. to grant the petition. In determining whether granting a section 388 petition is in the best interest of a child, the court must review a number of factors, including "(1) the seriousness of the problem which led to the dependency, and the reason for any continuation of the problem; (2) the strength of relative bonds between the dependent children to *both* parent and caregivers; and (3) the degree to which the problem may be easily removed or ameliorated, and the degree to which it actually has been." (*In re Kimberly F.*, *supra*, 56 Cal.App.4th at p. 532.)

In this case, the initial problems that led to dependency were mother's use of illegal drugs and mother's abandonment of Sam. while she was sick. These problems fall somewhere in the middle of the continuum of seriousness, less serious than sexual or physical abuse but more serious than a "dirty house" (See *In re Kimberly F.*, *supra*, 56 Cal.App.4th at p. 532). Accordingly, the first factor does not weigh in favor or against

granting mother's section 388 petition.

With respect to the second factor, viewing the evidence in a light most favorable to the juvenile court's order, it appears that Sam.'s bonding with grandmother is far greater than her bonding with mother. This factor thus weighs against granting mother's petition.

Finally, mother's long-term use of marijuana is not a problem that can be easily ameliorated. While mother should be commended for apparently abstaining from using drugs for a few months, it is difficult to predict what she will do in the future. The Department alleged in its juvenile dependency petition that mother used illegal drugs for six years. That allegation was sustained by the juvenile court and was not challenged by mother on appeal. "Substance abuse is notoriously difficult for a parent to overcome, even when faced with the loss of her children." (*In re William B.* (2008) 163 Cal.App.4th 1220, 1228; see also *In re Kimberly F.*, *supra*, 56 Cal.App.4th at p. 531, fn. 9.) Indeed, in this case, mother continued using illegal drugs even after she lost custody of Sam.

It is also worth noting that mother admitted to falsely telling the trial court at the October 16, 2007, hearing that she was not using marijuana. Mother also failed to appear for numerous drug tests, was slow to begin court-ordered drug counseling, and on at least one occasion apparently diluted her urine sample. Further, grandmother reported to the Department that when she objected to mother visiting Sam. while under the influence of drugs, mother stated " 'how are they [the Department] gonna know.' " When grandmother advised mother that she would tell the Department that mother visited Sam. while "high" on drugs, mother responded by stating that " 'oh cause the social worker is your [grandmother's] homey.' " The juvenile court could have reasonably inferred from these facts and the totality of the circumstances that mother was likely to resume her use of marijuana.

The other problem that led to dependency—mother's abandonment of Sam. in the care of grandmother and great-grandmother—can be more easily ameliorated. However, the juvenile court reasonably found that mother did not make as great of an effort as she should have to visit and spend time with Sam. after the child was taken from her custody.

In view of the factors set forth in *In re Kimberly F.*, the juvenile court reasonably found that granting mother's section 388 petition was not in the best interests of Sam. The juvenile court's order denying the petition was therefore not an abuse of discretion.

2. *There Was Substantial Evidence to Support the Juvenile Court's Decision to Terminate Mother's Parental Rights*

A section 366.26 hearing proceeds on the premise that the efforts to reunify the parents and child are over, "and the focus of the hearing is on the long-term plan for care and custody." (*In re Jasmine J.* (1996) 46 Cal.App.4th 1802, 1808.) If the court determines that it is likely the child will be adopted, the court must terminate parental rights and order the child be placed for adoption unless an exception to this rule applies. (See § 366.26, subd. (c)(1).)

Mother does not challenge the juvenile court's finding that Sam. was adoptable. Rather, she contends that the juvenile court erroneously found that the exception of section 366.26, subdivision (c)(1)(B)(i) does not apply. A court cannot terminate parental rights at a section 366.26 hearing if it finds that "termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B).)

"In the context of the dependency scheme prescribed by the Legislature, we interpret the 'benefit from continuing the [parent/child] relationship' exception to mean the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575; see also *In re Casey D.* (1999) 70 Cal.App.4th 38, 50.)

“Interaction between natural parent and child will always confer some incidental benefit to the child. The significant attachment from child to parent results from the adult’s attention to the child’s needs for physical care, nourishment, comfort, affection and stimulation. [Citation.] The relationship arises from day-to-day interaction, companionship and shared experiences. [Citation.] The exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent.” (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

We review the juvenile court’s findings relating to section 366.26 under the substantial evidence test. (See *In re Casey D.*, *supra*, 70 Cal.App.4th at p. 53; *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.) “On review of the sufficiency of the evidence, we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order.” (*In re Autumn H.*, at p. 576.)

Here, there was substantial evidence supporting the juvenile court’s finding that mother did not maintain “regular visitation and contact” with Sam. within the meaning of section 366.26, subdivision (c)(1)(B)(i) exception. There was also substantial evidence to support the juvenile court’s conclusion that mother did not develop a sufficient bond with Sam. for the exception to apply. This evidence consisted of, *inter alia*, the testimony of grandmother and Department employees, as well as reports submitted by the Department. Accordingly, we cannot overturn the juvenile court’s decision to terminate mother’s parental rights.

DISPOSITION

The order denying mother’s section 388 petition and the judgment terminating mother’s parental rights are both affirmed.

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KITCHING, J.

We concur:

KLEIN, P. J.

ALDRICH, J.